

**Notice of Allowability**

Application No.

10/763,109

Examiner

Gay Ann Spahn

Applicant(s)

ALLEN, DAVID M.

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed on 25 March 2005.
2. ☒ The allowed claim(s) is/are 1-20.
3. ☒ The drawings filed on 23 June 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 20050712.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **EXAMINER'S AMENDMENT/COMMENT**

### ***Response to Arguments***

Applicant's arguments, see Appeal Brief, filed 25 March 2005, with respect to claims 1-20 have been fully considered and are persuasive. The finality of the rejections and the rejections of the Office Action made final and mailed on 26 January 2005 have been withdrawn.

### ***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Michael D. Zalobsky on July 13, 2005 (see attached Examiner-Initiated Interview Summary, Form PTOL-413B).

The application has been amended as follows:

Claim 21 has been canceled.

***Allowable Subject Matter***

Claims 1-20 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach or disclose “a plurality of deflectors spaced about a perimeter of the internal cavity, the deflectors being configured to capture at least a portion of a quantity of water poured into the open top when the delivery unit is installed in the ground, the deflectors being further configured to direct the captured water outwardly toward the wall member so that it may be passed therethrough” as is specifically recited in independent claim 1 (and claims 2-15 either directly or indirectly dependent thereon); and

the prior art fails to teach or disclose “a plurality of deflectors spaced about a perimeter of the internal cavity, the deflectors being configured to capture at least a portion of a quantity of water poured into the open top when the delivery unit is installed in the ground and to direct the captured water outwardly toward the wall member so that it may be passed therethrough” as is specifically recited in independent claim 16 (and claims 17-20 either directly or indirectly dependent thereon).

More particularly, U.S. Patent No. 3,159,172 to Baxter does teach a deflector about the perimeter of the internal cavity for capturing a quantity of water poured into the open top of the delivery unit and directing the captured water outwardly toward the wall member so that it may be passed therethrough. However, Baxter does not teach a plurality of deflectors, Baxter only teaches one deflector.

U.S. Patent No. 4,268,994 to Urai teaches a plurality of deflectors (8) spaced about the perimeter of the internal cavity for capturing a quantity of water poured into the open top of the delivery unit, but Urai fails to teach directing the captured water outwardly toward the wall member so that it may be passed therethrough.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,268,994 to Urai discloses a three-dimensional planter. U.S. Patent No. 4,593,490 to Bodine discloses a planter having deflectors (50, 52). U.S. Patent No. 5,103,584 to Whisenant discloses a plant cultivation apparatus and method. U.S. Patent No. 5,276,997 to Swearengen et al. discloses a planter with built-in water distribution system. U.S. Patent No. 6,260,319 to Colomban discloses a protective barrier. U.S. Patent No. 4,676,023 to Mori discloses a cultivation device by use of water-and-air mixture. U.S. Patent No. 4,704,818 to Cameron discloses a hydroponic growing system and stackable modular components thereof. U.S. Patent No. 4,125,963 to Johnson discloses a means for and a method of cultivating plants. U.S. Patent No. 5,615,517 to Smith discloses an apparatus and method for irrigating plants. French Patent Application Publication No. 2,253,451 to Neff discloses a planter for cultivating plants. U.S. Patent No. 5,542,605 to Campau discloses an automatic liquid dispenser. U.S. Patent No. 5,996,279 to Zayeratabat discloses a plant irrigation apparatus. U.S. Patent No. 5,901,496 to Woodruff discloses an in-ground applicator for termiticide bait tube. U.S. Patent No. 3,452,475 to Johnson, Sr. discloses a self-

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
irrigated planter. U.S. Patent No. 1,217,239 to Swartz discloses a vegetative device. U.S. Patent No. 3,874,596 to Baxter discloses a fluid dispensing device. U.S. Patent No. 5,533,300 to Kesler discloses a plant feeder and method for feeding plant roots. U.S. Patent No. 4,726,143 to Steinbeck discloses a root fertilizing device. U.S. Patent No. 5,966,279 to Zayeratabat discloses a plant irrigation apparatus. U.S. Patent No. 1,971,390 to Yahres discloses a soil treating cartridge. U.S. Patent No. 5,911,540 to Adamason discloses a subterranean liquid distribution apparatus. U.S. Patent No. 4,785,575 to Shioi discloses a horticultural device for raising garden plants utilizing magnetism. U.S. Patent No. 5,172,515 to Lapshansky, Sr. et al. discloses an irrigation system and portable watering system therefor. U.S. Patent No. 4,753,394 to Goodman discloses a trickle irrigation system with improved emitters. U.S. Patent No. 3,821,863 to Chan discloses a controlled fertilizer feeder. U.S. Patent No. 2,105,800 to Watkins discloses a subirrigation device. U.S. Patent No. 2,145,934 to Kingman discloses a plant irrigation and feeding device. U.S. Patent No. 1,791,873 to Neiman discloses an irrigating device. U.S. Patent No. 1,194,027 to Kanst discloses a tree irrigator. U.S. Patent No. 73,442 to Fish discloses a tree-feeding tube. U.S. Patent No. 4,454,684 to O'Hare discloses a root augmentor for vertical horticulture. U.S. Patent No. 3,755,966 to Smith discloses a deep root feeder and tree irrigator. U.S. Patent No. 3,319,379 to Groeber et al. discloses a fertilizer feeding tube. U.S. Patent No. 6,408,570 to Shih et al. discloses a plant cultivation device. U.S. Patent No. 5,265,376 to Less discloses an arrangement in plant columns. U.S. Patent No. 4,986,027 to Harvey discloses a hydroponic growth system. U.S. Patent No. 5,333,409 to Mendes discloses a hanging

pot for growing plants. U.S. Patent No. 4,756,120 gravity feed hydroponic system. U.S. Patent No. 4,961,284 to Williams discloses vertical gardens (see Fig. 4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571)-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. However, this fax phone number is being phased out and will no longer be in service after September 15, 2005. The new fax phone number beginning July 15, 2005 will be (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gay Ann Spahn, Patent Examiner  
July 13, 2005

  
**MICHAEL SAFAVI**  
**PRIMARY EXAMINER**  
**ART UNIT 354**